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Paper No. 10

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**OCT 12 2004**

**OFFICE OF PETITIONS**

In re Application of	:	
Justin Page	:	
Application No. 09/557,252	:	DECISION DISMISSING
Filed: April 24, 2000	:	PETITION
Title: SYSTEM AND METHODS AND	:	
COMPUTER PROGRAM FOR PREVENTION,	:	
DETECTION, AND REVERSAL OF IDENTITY	:	
THEFT	:	

This is a decision on the petition under 37 CFR 1.137(a), filed September 23, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action, mailed December 19, 2002. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time permitted under \$1.136(a). A Notice of Appeal was filed on February 24, 2003; however, the accompanying check for the required appeal fee was returned to the PTO by petitioner's bank. No proper reply having been received and no extensions of time obtained, the application became abandoned effective March 20, 2003. A Notice of Abandonment was mailed on August 5, 2003.

On petition, applicant states the following reason for the delay in filing a proper reply to the Office action mailed December 19, 2002:

shortly after filing my last amendment a precipitous divorce and a series of hospitalizations for various disorders lasting nearly 18 (eighteen) months ensued. I was not able to respond to this office's actions and was not aware the application was 'dead.'

Further, the above-named examiner, respectfully, did not assist this pro se inventor in drafting a claim and refused the application by rote intervention of unrelated art.

### DISCUSSION

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c). The instant petition lacks items (1) and (3).

As to item (1), petitioner states that the petition includes a reply in the form of an amendment. However, no amendment is among the papers received on or subsequent to the filing of the petition. A proper reply to the non-final Office action mailed July 29, 2002 is required to revive this application.

As to item (3), the showing of record before the Office is inadequate to establish unavoidable delay within the meaning of 37 C.F.R. §1.137(a)(3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable (The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business.) In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). Decisions on revival are made on a "case-by-case" basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

Petitioner asserts divorce and incapacitation as causes of the delay in replying to the Office action and in filing a petition to revive. Being involved in a divorce will not ordinarily be sufficient to establish "unavoidable" delay within the meaning of § 1.137(a). This standard requires that applicant be reasonably treating their patent application as their most important business. Thus, preoccupation with other matters, including divorce proceedings, does not meet the standard for establishing unavoidable delay.

Under some circumstances, a showing of incapacitation may be sufficient to establish "unavoidable" delay. A showing of "unavoidable" delay based upon incapacitation must establish that petitioner's incapacitation was of such a nature and degree as to render petitioner unable to conduct business (e.g., correspond with the Office) during the relevant period. In this instance, the relevant period is between December 19, 2002 and June 19, 2003. Such a showing must be supported by a statement from

petitioner's treating physician, and such statement must provide the nature and degree of petitioner's incapacitation during the above-mentioned period. In this instance, the statement must establish how petitioner's incapacitation allowed him to file a notice of appeal on February 24, 2003, yet otherwise incapacitated him from timely responding to the Office action.

#### CONCLUSION

The showing required under \$1.137(a) is exacting, and petitioner has not met that showing.

Accordingly, the petition must be **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. \$1.137(a)" or "Renewed Petition under 37 C.F.R. \$1.137(b)," as appropriate. Extensions of time are permitted under \$1.136(a).

#### **Alternative Venue**

While the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable, petitioner is not precluded from seeking relief by filing a request for reconsideration pursuant to 37 C.F.R. \$1.137(b) on the basis of unintentional delay. A grantable petition under \$1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 C.F.R. \$1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in \$1.20(d)) required pursuant to \$1.137(d).

The petition, submitted by sole inventor Justin Page, is signed with an address different from the address of record. However, the petition does not include a request for a change of correspondence address. A courtesy copy of this decision is being mailed to the address on the petition. All future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this decision should be addressed as follows:

By mail:                      Mail Stop Petition  
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                                 P.O. Box 1450  
                                 Alexandria, VA 22313-1450

By FAX:                      (703) 872-9306

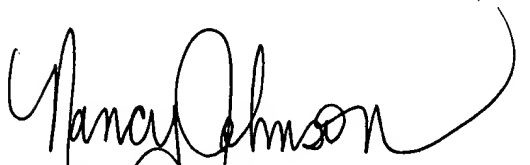
ATTN: NANCY JOHNSON  
SENIOR PETITIONS ATTORNEY

By hand:

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Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309 (or effective September 28, 2004 at (571) 272-3219).



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